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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Federal-State Joint Board on
Universal Service

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CC Docket No. 96-45

**PETITION FOR RECONSIDERATION AND
CLARIFICATION OF U S WEST, INC.**

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TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	ii
I. INTRODUCTION	1
II. THE COMMISSION SHOULD ESTABLISH A NATIONAL FUND, BECAUSE THE COMMISSION'S DECISION TO ASSESS CONTRIBUTIONS FOR UNIVERSAL SERVICE SUPPORT FOR HIGH- COST AREAS BASED SOLELY ON INTERSTATE REVENUES IS CONTRARY TO THE ACT	2
III. CONTRIBUTIONS SHOULD BE ASSESSED AS EXPLICIT END-USER SURCHARGES	9
IV. THE COMMISSION SHOULD ADOPT THE BCPM COST PROXY MODEL FOR NON-RURAL CARRIERS, TAKE CONTROL OF THE MODEL, AND PROCEED WITH REFINEMENTS AND IMPLEMENTATION	11
V. ONLY UNBUNDLED LOOPS SHOULD BE CONSIDERED TO BE A COMPETITIVE CARRIER'S "OWN FACILITIES" FOR PURPOSES OF RECEIVING HIGH-COST SUPPORT	15
VI. THE COMMISSION SHOULD CLARIFY THE RULE REGARDING TOLL LIMITATION AND MODIFY THE RULE REGARDING SERVICE DEPOSITS FOR LIFELINE CUSTOMERS	19
A. The Commission Should Clarify That 47 C.F.R. § 54.401(a)(3) Requires A Carrier To Offer Either Toll Blocking Or Toll Control, But Not Both.	20
B. Even If A Carrier Offers Toll Blocking, The Commission Should Modify 47 C.F.R. § 54.401(e) To Permit A Carrier To Collect A Service Deposit From Lifeline Customers.	22
VII. CONCLUSION	24

SUMMARY

U S WEST, Inc. ("U S WEST") urges the Commission to reconsider the following issues in the Universal Service Order. It is critical that the Commission establish a national fund to ensure that high-cost support is sufficient. In addition, contributions should be assessed as explicit end-user surcharges rather than hidden in contributors' rates as implicit subsidies.

For the high-cost support mechanisms, the Commission should adopt the BCPM cost proxy model for high-cost support, refine it, and implement the model effective January 1, 1998.

The Commission should clarify that the ILEC who constructs and owns an unbundled loop is entitled to receive directly all support payments for the facility. CLECs who purchase unbundled loops should be permitted to participate in the benefit of high-cost support, but only indirectly as a result of the support-adjusted unbundled loop price they pay for the facility.

Finally the Commission should clarify that 47 C.F.R. § 54.401(a)(3) requires a carrier to offer either toll blocking or toll control to Lifeline customers, but not both. In addition, even if a carrier offers toll blocking, the Commission should modify 47 C.F.R. § 54.401(e) to permit a carrier to collect a service deposit from Lifeline customers.

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**PETITION FOR RECONSIDERATION AND
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I. INTRODUCTION

U S WEST, Inc. ("U S WEST") submits this Petition for Reconsideration and Clarification of the Federal Communications Commission's ("Commission") Report and Order¹ establishing support mechanisms to ensure the delivery of affordable telecommunications service to all Americans.

The Commission said that the support mechanisms established by the Universal Service Order will achieve four goals. It will: (1) implement all of the universal service objectives established by Section 254² of the Telecommunications Act of 1996 ("Act"); (2) maintain rates for basic residential service at affordable levels; (3) ensure that affordable basic service continues to be available to all users;

¹ In the Matter of Federal-State Joint Board on Universal Service. CC Docket No. 96-45, Report and Order, FCC 97-157, rel. May 8, 1997 ("Universal Service Order" or "Order"); Errata, rel. June 4, 1997, on recon. July 10, 1997 ("Reconsideration Order"); consolidated appeals pending sub nom., Texas Office of Public Utility Counsel, 97-60421 (5th Cir.)

² 47 U.S.C. § 254.

and (4) bring the benefits of competition to as many consumers as possible.³

U S WEST respectfully submits that, without modification, the Universal Service Order will not achieve these goals.

II. THE COMMISSION SHOULD ESTABLISH A NATIONAL FUND, BECAUSE THE COMMISSION'S DECISION TO ASSESS CONTRIBUTIONS FOR UNIVERSAL SERVICE SUPPORT FOR HIGH-COST AREAS BASED SOLELY ON INTERSTATE REVENUES IS CONTRARY TO THE ACT.

In the Universal Service Order, the Commission correctly concluded that it has authority under the Act to establish a unified interstate-intrastate fund for high-cost service.⁴ Nevertheless, the Commission decided to provide no support for intrastate services at this time, and correspondingly not to assess contributions based on intrastate revenues.⁵ Instead, the Commission chose to provide high-cost support for only the federal portion of the local loop, and to rely on the states to provide the balance of the funds necessary to assure universal service. According to its Order, the Commission “[h]as adopted this approach because the Joint Board did not recommend that we should assess intrastate as well as interstate revenues for the high cost support mechanisms and because we have every reason to believe that the states will participate in the federal-state universal services partnership so that the high cost mechanisms will be sufficient to guarantee that rates are just, reasonable, and affordable.”⁶ The Commission did not attempt to identify existing

³ Universal Service Order ¶ 2.

⁴ Id. ¶¶ 813-23.

⁵ Id. ¶¶ 201-02, 268-69, 831-32.

⁶ Id. ¶ 268.

state subsidies of intrastate services,⁷ much less to determine whether such subsidies are sufficient to assure universal service. This, too, the Commission left to the states.⁸

The Commission should reconsider its approach to high-cost support and establish a national unified fund. As a practical matter, the scheme outlined in the Universal Service Order simply cannot be counted on to provide the support necessary to ensure universal service.⁹ The federal contribution will support only the federal portion – 25 percent – of the cost of the local loop,¹⁰ and there is no basis for the Commission’s blind faith that the states can or will choose to fund the balance of the universal service deficit.

In the first place, many states simply lack the means to provide such support. At bottom, providing support for high-cost service involves making transfers from customers who can be served at low cost to those who can be served only at high cost. As a rule, this means revenues that local exchange carriers (“LEC”) earn in densely populated urban areas must be used to subsidize service in rural and other remote regions. But many states – indeed, virtually all of those in U S WEST’s

⁷ Id.

⁸ Id. ¶ 202.

⁹ As Commissioner Ness has said: “[T]he federal program must be based on both intra - and interstate revenues and provide the full measure of support needed to meet the benchmark. The alternative is to risk that consumers, small businesses, and carriers in high-cost states will be left without the support Congress intended. This cannot be squared with Congress’s decision to write a clear commitment of universal service into federal law.” In the Matter of Federal-State Joint Board on Universal Service, Recommended Decision, Separate Statement of Commissioner Ness, 12 FCC Rcd. 87, 546 (1997) (“Joint Recommended Decision”).

¹⁰ Universal Service Order ¶¶ 201, 269.

region – lack sufficient low-cost service areas to provide the necessary supports for high-cost areas.

Costs are driven principally by density and distance. For example, U S WEST's region has an average of 40 customers per square mile, compared to several other Regional Bell Operating Companies ("RBOC") which have an average of 250 customers per square mile. The Commission's interstate fund covers only 25% of the cost in rural and high-cost areas and leaves 66% of customers in these areas without an explicit mechanism to ensure affordability. Customers in low-cost, high-density areas such as New York state must provide support for customers in high-cost, low-density areas such as Montana and Wyoming. The Commission's support mechanism fails to recognize this fundamental principle.

What is more, even those states that have the means to fund an intrastate high-cost fund have no federal legal obligation to do so. The Act does not – indeed, cannot – require the states to fund intrastate universal services. Rather, Congress merely acknowledged that states have the option to supplement the federal scheme for universal support adopted in the Act. States "may" adopt additional increments to the federal program.¹¹ Such state programs must be "not inconsistent with the Commission's rules to preserve and advance universal service" and may "provide for additional definitions and standards" only if states also "adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms."¹²

¹¹ 47 U.S.C. § 254(f).

¹² Id.

There is no reasonable basis for the Commission's assumption that every state will take the steps necessary to create a fund that will ensure universal service in its rural and other high-cost areas. To create such a fund would require the state to generate the necessary revenues by imposing substantial contribution obligations on intrastate service providers, which would be borne ultimately by non-high-cost users. In other words, the states would have to raise rates for, among other things, local service. A separated fund would mean that consumers in 39 states would pay substantially higher rates to maintain a ubiquitous telephone network which benefits all consumers nationwide.¹³ Rates in most of these states will ultimately be unaffordable.

As the Commission well appreciates, such a course is fraught with political peril, and states can be expected to avoid rather than seek out those risks. The fact that some states may choose not to take this course will increase the political and competitive risks for states that attempt to do so.

In short, the Commission's expression of faith that states can step up to the responsibility for creating intrastate high-cost funds is unjustified. The Commission offers no reason for its conclusion that the states will be willing to do so. Rather, it explains its decision to support only the federal portion of the local loop as a means of promoting "comity between federal and state governments."¹⁴ This unexplained failure to establish a combined fund to address the whole problem of high-cost service is arbitrary and capricious at best.

¹³ See Attachment 1.

¹⁴ Universal Service Order ¶ 831.

The Commission's failure to adopt a unified fund also conflicts with the requirements of Section 254 that universal service support be both "sufficient" and "predictable." These requirements appear throughout the section. The principles that Congress directed the Commission to follow include the use of "specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service."¹⁵ The Commission has an affirmative duty to establish "specific, predictable, and sufficient mechanisms" for carrier contributions for the purpose of preserving and advancing universal service.¹⁶ "Federal universal service support" (not federal and state support in combination) to eligible carriers must be "explicit and sufficient to achieve the purpose" of Section 254.¹⁷

One purpose of Section 254 is to promote "comparable" rates throughout the country. Congress directed the Commission to establish rules that neutralize cost differences across states and regions and not merely within individual states: "Consumers in all regions of the Nation, including . . . those in rural, insular, and high cost areas, should have access to telecommunications and information services . . . at rates that are reasonably comparable to rates charged for similar services in urban areas."¹⁸

As shown above, the scheme established by the Commission is not sufficient to assure universal service. The Commission plan will provide support for only the federal share of the local loop; it ignores Section 254's mandate to ensure that high

¹⁵ 47 U.S.C. § 254(b)(5) (emphasis added).

¹⁶ 47 U.S.C. § 254(d).

¹⁷ 47 U.S.C. § 254(e) (emphasis added).

¹⁸ 47 U.S.C. § 254(b)(3).

cost users can afford the entire cost of service. A rural family cannot obtain telephone service by subscribing to the “federal share” of a local loop. The Commission’s scheme also cannot ensure that the rates consumers pay will be comparable from state to state across rural, insular, high cost, and urban areas. Only a combined fund will be sufficient to accomplish that congressional objective of nationwide parity.

The intent of Congress is evidenced by Section 254(b)(4) which requires “[a]ll providers of telecommunications service” to “make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.”¹⁹ If intrastate services are not included in the funding base, the Congressional charge to this Commission to require all providers of telecommunications service to contribute rings hollow, and this Commission cannot say, as it has, that the Universal Service Order implements the objectives mandated by Congress. Incumbent LECs (“ILEC”) separate their investments, costs, and revenues into interstate and intrastate components. Other carriers are under no obligation to do the same. To the extent that intrastate services are excluded from the funding base, carriers would have the opportunity to reduce their federal universal service support obligation by designating revenues as intrastate and all providers would not make equitable and nondiscriminatory contributions to the federal fund, as required by Section 254(b)(4).

Nor has the Commission adopted “predictable” mechanisms as required by Congress. To the contrary, the effectiveness of the Commission’s approach depends

¹⁹ 47 U.S.C. § 254(b)(4) (emphasis added).

entirely on whether states provide the remaining 75 percent of the support necessary to assure universal service. For the reasons set forth above, the states' provision of such support is not "predictable" by any measure.²⁰

Finally, in addition to contravening Section 254, the limitation of the fund to interstate revenues will undermine the procompetitive goals of the Act. Congress sought through the Act to open to full and effective competition the markets for local telephone service. Its objective was to promote the development of effective competition for local service throughout the country, including in rural and other high-cost areas. To ensure that end users in high-cost areas would benefit from competition, Congress specifically provided in Section 214 that new entrants would qualify for universal service support.²¹ If the funds available to support service in high-cost areas are insufficient to support the provision of affordable service, the effect will be to make entry more difficult.

Encouraging new entry in high-cost areas is an important new policy objective established by the Act. The Commission is wrong to characterize universal service support for high-cost areas as an existing policy that can safely rely on existing mechanisms. The Commission justified the use of both interstate

²⁰ An additional source of uncertainty inherent in the Commission's approach is the fact, as recognized in the NPRM, that many telecommunications carriers are not subject to the jurisdictional separation rules. See In the Matter of Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking and Order Establishing Joint Board, 11 FCC Rcd. 18092, 18149 ¶ 125 (1996). As competition in local telephone markets expands, it will become even more difficult to distinguish between interstate and intrastate revenues. See Joint Board Recommendation, Separate Statement of Commissioner Chong, 12 FCC Rcd. at 559 (supporting recommendation to base contributions for schools, libraries, and health care providers on both interstate and intrastate revenues (id. at 558)).

²¹ 47 U.S.C. § 214(e).

and intrastate revenues for schools, libraries, and health care on the basis that “many states do not already have programs in place that would guarantee sufficient support mechanisms.”²² The same analysis is equally applicable with respect to ensuring adequate support for new entrants to serve high-cost areas.

And even though the Commission declined in its recent Reconsideration Order²³ to assess universal service contributions from both interstate and intrastate revenues, U S WEST urges the Commission to reconsider this issue for the reasons stated herein.

III. CONTRIBUTIONS SHOULD BE ASSESSED AS EXPLICIT END-USER SURCHARGES.

The Commission concluded that contributors to the universal support programs would be permitted to recover their contributions through the contributing carrier’s interstate rates. ILECs who are subject to price caps will be permitted to add their universal service contributions to the carrier’s common line basket and recovered in the same manner as common line charges.²⁴

Section 254(e) requires that all support for universal service be “explicit.” Section 254(d) requires that the support mechanisms be “specific, predictable, and sufficient.” These are not objectives, but requirements, of the Act. The Commission determined that contributions should be assessed from interstate end-user telecommunications revenues. However, the Commission requires carriers to mask their contributions and to recover them from the carrier common line basket. This

²² Universal Service Order ¶ 840.

²³ Reconsideration Order ¶¶ 25-28.

²⁴ Universal Service Order ¶¶ 772-74.

recovery mechanism perpetuates the practice of implicit subsidies. The Act no longer permits this.

To ensure that the Commission's Universal Service Order complies with the requirement that funding be explicit, the Commission should require contributors to collect the funding as a surcharge that is both based upon and reflected in the end user's retail bill for both intrastate and interstate services. Moreover, assessing contributions as a surcharge would also obviate the need for carriers to change their access rates as a result of fluctuations in their support obligations.

If the Commission declines to adopt a national unified fund based upon both interstate and intrastate revenues, states will be required to raise rates for, among other things, local service if they choose to establish and fund an intrastate high cost fund.

By determining that contributions should be based upon end-user revenues, the Commission has already positioned the assessment base to implement an end-user surcharge. Accordingly, if the Commission modifies the fund to include both interstate and intrastate revenues, which it is authorized to do, and if it modifies implementation of the support mechanism to require contributors to collect the funding as a uniform end-user surcharge, the high-cost fund would fulfill the intent and the requirements of Congress. U S WEST urges the Commission to reconsider the issue of an end-user surcharge.

IV. THE COMMISSION SHOULD ADOPT THE BCPM COST PROXY MODEL FOR NON-RURAL CARRIERS, TAKE CONTROL OF THE MODEL, AND PROCEED WITH REFINEMENTS AND IMPLEMENTATION.

The Commission concluded that the proper measure of cost for determining the level of universal service support is the forward-looking economic cost to construct and operate the network facilities needed to provide the services to be supported by the universal service fund.²⁵ The Joint Board recommended that the Commission use a proxy model, based upon forward-looking economic costs for the provision of basic telephone service, to determine support levels for universal service.²⁶ U S WEST agrees that using forward-looking costs allows a more precise targeting of high costs. In addition, ILECs should be compensated for their historical embedded costs incurred under previous forms of regulation. Recovery of these costs can be addressed in the high-cost fund directly or alternatively in the Commission's historical cost proceeding.

The Commission observes that there has been significant progress in the development of the contending cost proxy models since the Joint Board made its recommendation.²⁷ The Joint Board considered four proxy models: the BCM, the BCM2, the CPM, and the Hatfield model. However, since the Joint Board issued its Recommended Decision, the models have been further refined and now consist of two: the BCPM and Hatfield 3.1.

Nevertheless, the Commission is critical of these models. The Commission

²⁵ Id. ¶ 224.

²⁶ Recommended Decision, 12 FCC Rcd. at 231-34 ¶¶ 275-82.

²⁷ Universal Service Order ¶¶ 235-240.

says that analysis of these models has been hampered by delays in submission and updating by the models' sponsors to correct technical problems.²⁸ The Commission concludes that neither model can be used at this time to calculate the forward-looking economic cost on which to base support for universal service in high-cost areas.²⁹

The Commission proposes to bring the selection of a cost proxy model to conclusion within the following timeline: (1) The Commission will continue to review the BCPM and the Hatfield models; (2) The Commission will issue a FNPRM by the end of June 1997 seeking a forward-looking cost methodology for non-rural carriers; (3) By the end of 1997, the Commission will select a specific model with which to develop the methodology; (4) The Commission will seek comments on that selection; (5) The Commission anticipates adopting a cost methodology by August 1998; (6) The cost methodology will be implemented for non-rural carriers beginning on January 1, 1999.³⁰

U S WEST views this itinerary as backsliding from the substantial progress which has been achieved to date. Even though existing high-cost support mechanisms will be used for non-rural carriers through December 31, 1998, by which time the Commission will have a forward-looking cost methodology in place for non-rural carriers,³¹ the implicit subsidies which have been embedded in existing services and which have been available to ILECs to fund their universal service

²⁸ Id. ¶ 243.

²⁹ Id. ¶ 245.

³⁰ Id.

³¹ Id. ¶ 273.

support costs will not be available. These implicit subsidies have been removed in large measure as a result of the Commission's Orders on Interconnection,³² Access Reform,³³ etc. For example, the implicit subsidies generated for ILECs from access charges will begin to disappear effective January 1, 1998 as a result of the Access Reform Order, because the Commission has created a regulatory induced price arbitrage that competitors will exploit and it will become more difficult for ILECs to maintain the current subsidies.

As the United States Telephone Association ("USTA") said in its Comments to the Joint Recommended Decision, more than \$20 billion in implicit support is provided through ILEC prices for other services under the current system.³⁴ However, because much of that implicit support will no longer be available, the ability of non-rural carriers to cover their costs in providing universal service is in serious doubt, until the cost proxy model finally adopted by the Commission is implemented beginning January 1, 1999 at the earliest.

The Second Report of the State Members of the federal-state Joint Board³⁵

³² In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order, 11 FCC Rcd. at 15499 (1996); consolidated appeals sub nom., Iowa Utilities Board v. FCC, 96-3321 (8th Cir.).

³³ In the Matter of Access Charge Reform, et al., CC Docket No. 96-262, et al., First Report and Order, FCC 97-158, rel. May 16, 1997 ("Access Reform Order"); consolidated appeals sub nom., Southwestern Bell Telephone Company v. FCC, 97-2618 (8th Cir.).

³⁴ Comments of the United States Telephone Association, Cc Docket No. 96-45, filed Dec. 19, 1996 at Summary 1, 4.

³⁵ State Members' Second Report on the Use of Cost Proxy Models, CC Docket No. 96-45, dated Apr. 21, 1997 ("State Members' Second Report").

illustrates that three of the five State members are keenly aware of the enormous efforts that they and others have expended to date on the cost proxy models. Although they acknowledge that both the BCPM and the Hatfield models do not satisfy all aspects of all of the criteria being used to evaluate the models, they offered a pragmatic recommendation to this Commission: choose one of the models, take control of the chosen model, and work diligently to refine it. Three of the five State members said:

In our First Report, the State members recommended that the FCC adopt a single cost proxy model as quickly as possible in order to focus the efforts of all parties on improving that model. We now recommend that the model to be used should be the BCPM model sponsored by US West, Sprint, and Pacific Bell.

In conjunction with selecting the BCPM, we also recommend the transfer of the control and administration of the model to the FCC. This action may entail a transfer of rights to the underlying model code and legal release of the access to the model, but we believe it is necessary to ensure that future revisions to the BCPM will be independent and within the control of the FCC. We urge all participants in this proceeding to work in cooperation with the FCC and the Federal-State Joint Board to determine the appropriate revisions to the BCPM.

Our recommendation to select the BCPM, along with our suggested inputs, should not be viewed as a wholesale endorsement of all aspects of this model. Rather we believe that this model is currently the best platform from which interested parties and regulators can make collective revisions.³⁶

The Commission's suggested procedure and timeline in the Universal Service Order for the selection and refinement of a cost proxy model requests the participants to start the development and evaluation of a cost proxy model again from the very beginning. Moreover, this process may or may not result in the

³⁶ Id. at 7.

implementation of an acceptable model by January 1, 1999. However, because the implicit subsidies which have been available to ILECs will begin to disappear effective January 1, 1998, the Commission's timetable for the selection, refinement, and implementation of a cost model in this docket is impractical and exposes ILECs to substantial financial risk.

U S WEST commends the State members for the pragmatic approach recommended in their Second Report. The Commission should select the BCPM model now, take control of the model, seek input from all participants, refine the model, and implement it not later than January 1, 1998.³⁷

V. ONLY UNBUNDLED LOOPS SHOULD BE CONSIDERED TO BE A COMPETITIVE CARRIER'S "OWN FACILITIES" FOR PURPOSES OF RECEIVING HIGH-COST SUPPORT.

Section 214(e)(1) of the Communications Act of 1934 sets forth the eligibility criteria for carriers to receive universal service support:

- (1) ELIGIBLE TELECOMMUNICATIONS CARRIERS.--A common carrier designated as an eligible telecommunications carrier under paragraph (2) or (3) shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received--
 - (A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and
 - (B) advertise the availability of such services and the charges

³⁷ January 1, 1999 can be used as the target date to include unbundled network elements in the cost model. However, it is critical that January 1, 1998 be the implementation date for the basic cost proxy model.

therefor using media of general distribution.³⁸

When a requesting carrier obtains an unbundled network element, the Commission concluded that such element, if it is also a facility, is the requesting carrier's "own facility" for purposes of satisfying the eligibility criteria in Section 214(e)(1).³⁹ The Commission also concluded that a requesting carrier need not offer services wholly over "its own facilities," because Section 214(e)(1) does not prescribe a specific level of its own facilities which a carrier must use.⁴⁰ The Commission also concluded that a carrier who only serves customers by reselling another carrier's services does not satisfy the eligibility criteria to use "its own facilities" or a combination of its own facilities and resale to receive universal support.⁴¹ The Commission's conclusion that "its own facilities" includes the use of any and all unbundled network element facilities purchased from another carrier is too broad.

From an economic and policy perspective, loop facilities should be eligible for support, because high cost is almost always caused by high-loop costs. Therefore, competitive LECs ("CLEC") who purchase unbundled loops should be eligible to participate in high-cost support for those loop facilities. The Commission described the manner in which a CLEC would participate:

We conclude below that a CLEC serving a customer in a high cost area exclusively through the use of unbundled network elements will receive the lesser of the total amount of support given to the ILEC or the price of the unbundled network elements to which it obtains access. We also conclude that the ILEC will receive the difference

³⁸ 47 U.S.C. § 214(e)(1).

³⁹ Universal Service Order ¶ 158; 47 C.F.R. § 54.201(f).

⁴⁰ Id. ¶ 169.

⁴¹ Id. ¶ 174.

between the unbundled network element price and the support amount.⁴²

The ILEC from whom the CLEC obtains the unbundled loop pays for the cost to construct the facility. Therefore, high-cost support must go directly to the owner of the facility who can then indirectly pass on the benefit of the support to the CLEC who purchases the unbundled loop. The example used by the Commission to describe how high-cost support would be indirectly passed on to a reseller is also an appropriate example to illustrate how high-cost support should be indirectly passed on to a CLEC who purchases an unbundled loop:

For example, suppose that the cost of providing service to a customer in a high cost area, on a forward-looking basis, is \$50.00 per month, and suppose that the universal service support payment for serving that customer is \$20.00. This would leave \$30.00 for the carrier to collect from the subscriber. A carrier that builds all the facilities it uses to provide service to that customer would be entitled to the \$20.00 payment and would, assuming that it bills the customer \$30.00, fully recover its \$50.00 per-month costs. Under the pricing rule in section 252(d)(3), a carrier that serves the same customer by reselling wholesale service would receive a discount off of the *retail* rate of \$30.00. For example, a reseller might receive a 20 percent discount, which would result in a wholesale price of \$24.00 per month, thus allowing it to charge, depending on its costs of doing business, a retail price of \$30.00. As a result, both the carrier that constructs its facilities and the carrier that serves customers through resale benefit, directly or indirectly, from the full \$20.00 per-customer universal service support payment. With regard to these two methods of providing service, therefore, the universal service high cost system is “competitively neutral.”⁴³

This same methodology should apply to unbundled loops.⁴⁴ For example, if the cost of an unbundled loop is \$50.00 and the average unbundled loop price is \$20,

⁴² *Id.* ¶ 164 n.417.

⁴³ *Id.* ¶ 163.

⁴⁴ However, a wholesale discount would not apply to an unbundled loop.

the owner who constructed the loop should receive the support payment of \$30. A CLEC who purchases the unbundled loop at the loop price of \$20 would indirectly participate in the benefit of the support payment through the price it pays for the unbundled loop.

Even though CLECs who purchase and use unbundled loops should be entitled to participate indirectly in high-cost support, there is the potential for arbitrage if the high-cost support is targeted based upon a small geographic area while unbundled loop costs are averaged over a larger area. This mismatch and the resulting arbitrage can be minimized by reflecting the high-cost support for loops in the unbundled loop price. U S WEST recommends the following approach:

- (1) Determine the unbundled loop price through negotiation or state commission arbitration.
- (2) Determine the total amount of targeted high-cost support which will be available for all geographic areas within the state (e.g., by Census Bureau Groups ("CBG"), Wire Centers, etc.). Divide this amount by the total number of lines within the state to get an average per-line support for the state.
- (3) Subtract the average per-line support from the unbundled loop price to obtain the support-adjusted unbundled loop price.

This approach would ensure that the CLEC who purchases unbundled loops would participate equitably in the benefit of high-cost support. This would also obviate any need to design complicated mechanisms to allocate the support between the ILEC and the CLEC. Finally, this approach eliminates the possibility of

arbitrage of high-cost support, it is pro-competitive, and it encourages investment in loop facilities.

U S WEST urges the Commission to reconsider this issue. Support should be limited to unbundled loops and be paid directly and in full to the ILEC who constructs the facility. A CLEC who purchases the unbundled loop should participate indirectly in the benefit of the support through the support-adjusted unbundled loop price.

VI. THE COMMISSION SHOULD CLARIFY THE RULE REGARDING TOLL LIMITATION AND MODIFY THE RULE REGARDING SERVICE DEPOSITS FOR LIFELINE CUSTOMERS.

The Commission concluded that Lifeline service provided to low-income consumers must include the following services: single-party service; voice-grade access to the public switched network; dual-tone multi-frequency ("DTMF") signalling or its functional digital equivalent; access to emergency services; access to operator services; access to interexchange service; access to directory assistance; toll-limitation services.⁴⁵

The Commission provided further elaboration about toll limitation in the following rules which it adopted:

The carriers shall offer toll limitation to all qualifying low-income consumers at the time such consumers subscribe to Lifeline service. If the consumer elects to receive toll limitation, that service shall become part of that consumer's Lifeline service.⁴⁶

Eligible telecommunications carriers may not disconnect Lifeline

⁴⁵ Universal Service Order ¶ 384.

⁴⁶ 47 C.F.R. § 54.401(a)(3).

service for non-payment of toll charges.⁴⁷

Eligible telecommunications carriers may not collect a service deposit in order to initiate Lifeline service, if the qualifying low-income consumer voluntarily elects toll blocking from the carrier, where available. If toll blocking is unavailable, the carrier may charge a service deposit.⁴⁸

A. The Commission Should Clarify That 47 C.F.R. § 54.401(a)(3) Requires A Carrier To Offer Either Toll Blocking Or Toll Control, But Not Both.

The Commission reasoned that providing toll limitation, without charge, to Lifeline consumers would assist these customers in avoiding involuntary termination of their telecommunications services and should encourage subscribership.⁴⁹ The Commission concluded that both “toll blocking” and “toll control” are forms of “toll limitation” which should be supported by universal support mechanisms.⁵⁰ The Commission said that carriers with deployed switches that are incapable of providing toll limitation services will not be required to provide such services to customers served by those switches until those switches are upgraded.⁵¹

The language used in some parts of the Universal Service Order to describe the requirement for eligible carriers to provide “toll limitation” implies that carriers are required to offer both “toll blocking” and “toll control” to comply with the Commission’s requirement. However, other portions of the Order suggest that if a

⁴⁷ 47 C.F.R. § 54.401(b).

⁴⁸ 47 C.F.R. § 54.401(c).

⁴⁹ Universal Service Order ¶ 385.

⁵⁰ Id. ¶ 385.

⁵¹ Id. ¶ 388.

carrier offers “toll blocking,” the carrier would comply with the Commission’s requirement to offer “toll limitation” to Lifeline customers.

U S WEST’s switches are capable of providing “toll blocking.” However, it is U S WEST’s experience that implementation of “toll control” is inefficient and impractical. Toll control allows the end-user customer to monitor and control its toll usage. Limitations set a toll dollar amount that a customer could incur before toll access is denied. The use of prepaid calling cards and billing software solutions are two current methods of providing customers with toll control capabilities. Both of these solutions require additional resources beyond end-office switching features.

The development and use of billing system software solutions for toll control is currently limited to a few large LECs. Billing system software solutions can be used to monitor an end user’s toll charges. However, the effectiveness of billing system solutions will depend on whether the LEC is responsible for recording, rating, and billing all of the end user’s toll charges. In order to effectively monitor an end user’s toll charges, the monitoring carrier requires timely access to toll billing information for every toll carrier the end user may utilize during the monitoring cycle.

Effective monitoring would require almost real time access to toll billing information. Daily or even hourly collection of billing information could result in a customer exceeding its predetermined toll limit. If the LEC does not perform all of the billing functions for all toll carriers serving the end user, then these toll carriers should be required to provide the monitoring LEC with timely billing information necessary to monitor the end user’s toll. However, the major companies and many

of the small companies only supply that information once a month per account, usually on the billing date.

“Toll control” requires substantial human intervention and would require development work to mechanize toll restriction. On the other hand, all significant aspects of “toll blocking” are substantially mechanized at the switch.

Because both “toll blocking” and “toll control” are forms of “toll limitation,” the Commission should clarify that a carrier is not required to offer both. Rather, the Commission should make it clear that a carrier who offers either “toll blocking” or “toll control” to Lifeline customers satisfies the requirement in 47 C.F.R.

§ 54.401(a)(3).

B. Even If A Carrier Offers Toll Blocking, The Commission Should Modify 47 C.F.R. § 54.401(e) To Permit A Carrier To Collect A Service Deposit From Lifeline Customers.

In the Universal Service Order, the Commission adopted the following rule regarding service deposits for Lifeline customers:

Eligible telecommunications carriers may not collect a service deposit in order to initiate Lifeline service, if the qualifying low-income consumer voluntarily elects toll blocking from the carrier, where available. If toll blocking is unavailable, the carrier may charge a service deposit.⁵²

U S WEST offers toll blocking to Lifeline customers, which is generally effective to block outgoing long distance call attempts. However, toll blocking does not prevent the Lifeline customer from receiving collect calls or from billing long distance calls made from another phone to the customer’s Lifeline number (“3d

⁵² 47 C.F.R. § 54.401(c).